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FISCAL IMPACT STATEMENT

LS 6176

BILL NUMBER: HB 1213

NOTE PREPARED: Jan 11, 2009

BILL AMENDED:

SUBJECT: Smoking Ban in Public Places.

FIRST AUTHOR: Rep. Brown C

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: *Smoking Prohibition:* The bill prohibits smoking in: (1) public places; (2) enclosed areas of a place of employment; and (3) certain state vehicles.

Indiana Alcohol and Tobacco Commission: It requires the Alcohol and Tobacco Commission to enforce the prohibition.

Infractions: The bill makes it a Class B infraction to violate the smoking prohibition and a Class A infraction if the person has three unrelated prior offenses.

Repeal: It also repeals the current Clean Indoor Air Law that prohibits smoking in public buildings.

Effective Date: July 1, 2009.

Explanation of State Expenditures: *Summary* - The bill will increase costs for the Indiana Alcohol and Tobacco Commission (IATC) to enforce the smoking ban. The increased costs will vary depending on how IATC implements its enforcement responsibility. Also, revenues for the state General Fund could increase through infraction judgements for two Class B infractions established under the bill.

Indiana Alcohol and Tobacco Commission: Under current law, the Clean Indoor Air Law is under the sections of the Indiana Code concerning the State Department of Health (ISDH). Enforcement of the statute is not assigned, meaning that it is enforced by law enforcement officers. Under the bill, the IATC would have enforcement responsibility. The bill prohibits smoking in most public places.

The IATC currently has authority for enforcing the “sale of cigarette” provisions in the public places that would be part of the smoking ban in the bill. In addition, the IATC would have responsibility to enforce the smoking ban in places that the IATC does not currently monitor. As a result, the IATC will need to increase staffing to address this new responsibility. However, there are no data available to estimate the number of public places where enforcement will occur. The IATC could enforce the new smoking ban with its own enforcement agents or delegate enforcement to other local agencies. (Under IC 34-28-5, all law enforcement officers have authority to enforce infractions.) Also, the IATC could actively enforce the smoking ban or choose to only investigate complaints received. These management decisions will determine the additional staffing requirements.

Background on the IATC- The appropriation for the IATC in FY 2009 is \$11.6 M. The IATC is funded with dedicated funds from tobacco and alcohol excise taxes. As of September 2, 2008, there were 97 employees with total salaries of \$4.7 M assigned to the Excise Police Enforcement Section (EPES) of the IATC. The average annual salary of employees of the EPES is \$48,950, and average salaries range from \$27,729 to \$78,000.

Explanation of State Revenues: *Impact of Smoking Ban on Casino Revenue:* The bill could potentially affect revenue from the riverboat wagering tax, riverboat admission tax, and slot machine wagering taxes to the extent that the smoking ban either: (1) reduces attendance at the riverboat casinos and racetrack slot facilities; or (2) reduces the average amount of time patrons who smoke spend gambling at these venues. The extent of the reduction is indeterminable and probably would vary depending on each venue’s location.

(1) The revenue loss could be significant from Blue Chip Casino in Michigan City since they compete directly with a tribal casino in New Buffalo, Michigan, which would not have to operate under a smoking ban. The reductions in the admissions and wagering tax bases from Blue Chip could approach the magnitudes experienced at Delaware and Illinois casinos due to smoking bans in those states.

(2) There could also be revenue loss from the casinos in Lake County and Casino Aztar in Evansville since these casinos have significant market areas in Illinois. These reductions could occur if patrons who shifted business from Illinois casinos to Indiana casinos due to the Illinois smoking ban, return to Illinois casinos due to closer proximity or other factors.

(3) The other casinos in southern Indiana and the racetrack slot facilities may not be affected significantly from the smoking ban since their markets are primarily in Indiana, Kentucky, and Ohio. Patrons of these facilities would not have any alternatives for casino gaming where smoking is allowed.

It is important to note that the effects outlined in (2) and (3) may not hold up in the long run if Illinois repeals its smoking ban, or at least exempts its casinos from the smoking ban; or if either Kentucky or Ohio (with an exemption from its statewide smoking ban) authorizes casino gambling.

Background Information: Econometric studies estimating the impact of Delaware’s statewide smoking ban (which began in November 2002) on gambling at Delaware’s racetrack casinos indicate that the ban reduced wagering levels at the casinos by an average of 15% to 16%. By facility, these studies indicate the reductions have varied from about 9% to about 18% depending on the racetrack casino. No studies yet have been conducted to estimate the impact of Illinois’s statewide smoking ban (which began in January 2008) on wagering at Illinois’s riverboat casinos. However, monthly attendance and wagering revenue data suggest

that the smoking ban has led to significant declines apart from declines that may be attributable to the current economic downturn. Attendance and wagering revenue at Illinois riverboat casinos declined in 2008 by 11.4% and 20.9%, respectively. In comparison, attendance and wagering revenue declined at Indiana's 11 riverboat casinos but only by 6.5% and 6.2%, respectively. And, some of this decline was attributable to gambling activity shifting primarily from the 3 casinos in southeast Indiana to the racetrack slot machine facilities which opened in June 2008. If the wagering revenue totals generated at racetrack slot facilities are included with those for the year from the riverboat casinos, statewide wagering revenue actually increased by 1.65% in 2008. Nevertheless, a statewide smoking ban in Indiana may not translate into the overall declines experienced in Delaware and Illinois. This is because Delaware and Illinois imposed bans while surrounding states with competing gaming facilities had no such smoking bans, or exempted casinos from the smoking ban. The Delaware racetrack casinos compete directly with the casinos in Atlantic City and racetrack casinos in West Virginia, while Illinois's riverboat casinos compete directly with casinos in Indiana, Iowa, and Missouri. (Note: While Iowa has a statewide smoking ban, casinos are exempted from the ban.)

Infractions: There are no data available to indicate how many offenders may be found guilty of prohibited smoking, a Class B infraction, or how many owners, managers, or operators of public places or places of employment may fail to comply with the provisions of the act, a Class B infraction. Both of these offenses may be enhanced to a Class A infraction if the offender has three prior, unrelated convictions. If additional court cases occur and infraction judgments and court fees are collected, revenue to the state General Fund may increase. The maximum judgment for a Class B infraction is \$1,000, and the maximum judgment for a Class A infraction is \$10,000. Judgments are deposited in the state General Fund.

If court actions are filed and a judgment is entered, a court fee of \$70 would be assessed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), the public defense administration fee (\$3), the court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund.

Explanation of Local Expenditures:

Explanation of Local Revenues: *Impact of Smoking Ban on Casino Revenue: See Explanation of State Revenues.*

Infractions: If additional court actions are filed and a judgment is entered, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$70 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

State Agencies Affected: Alcohol and Tobacco Commission.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Indiana Gaming Commission, Monthly Revenue Reports: 2007-2008. Illinois Gaming

Board, Monthly Riverboat Casino Reports: 2007-2008. Michael R. Pakko, "No Smoking at the Slot Machines: The Effects of Smoke-Free Laws on Gaming Revenues." Working Paper 2005-054A, Federal Reserve Bank of St. Louis. Richard Thalheimer and Mukhtar M. Ali, "The Demand for Casino Gaming with Special Reference to a Smoking Ban." Economic Inquiry, April 2008, 273-282.

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